U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18674323

Date: SEP. 02, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a martial artist, seeks classification as an individual of extraordinary ability. This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, and we dismissed the appeal. Thereafter, we dismissed a combined motion to reconsider and reopen and a subsequent motion to reconsider. The matter is now before us on a combined motion to reconsider and reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained

national or international acclaim and whose achievements have been recognized in the field through extensive documentation. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or established that our decision to dismiss the previous motion was based on an incorrect application of law or USCIS policy.

A. Prior AAO Decisions

The Director concluded that the Petitioner did not demonstrate that he received a major, internationally recognized award and that he satisfied only one of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv), of which he must meet at least three. In dismissing the appeal, we withdrew the Director's determination relating to the judging criterion and decided that the Petitioner did not fulfill any of the claimed criteria. We dismissed the first motion, concluding that the Petitioner requested us to reconsider our decision without showing how we erroneously applied law or policy. Further, while he provided additional documentation, we determined that the Petitioner did not establish that the new evidence demonstrated his eligibility for the judging criterion.

In our most recent decision dismissing the Petitioner's motion to reconsider, we concluded that he did not show how we erroneously applied law or policy, as he submitted a brief mirroring his previous motion brief without any mention or discussion of our decision dismissing his combined motions.

B. Judicial Proceeding Statement

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner,

however, did not include the required statement. Therefore, the Petitioner's motions do not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

C. Motion to Reconsider

As discussed previously, a motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner submits a brief that is very similar to his previous motion brief. Although the current motion brief provides additional information about the Petitioner's admirable struggle against privation to successfully train and compete in martial arts, it makes the same arguments as the previous motion brief for the awards, published materials, judging, and leading or critical role criteria, without any mention or discussion of our decision dismissing his motion. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).[1] ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .")

Further, although the Petitioner now asserts that "most of my medals and all information about me participating in all kinds of competitions was collected by my trainer" and "I lost the bulk of my diplomas and certifications as a result of his death," he does not explain how the claimed unavailability of unspecified additional awards establishes that our prior motion decision was based on an incorrect application of law or policy and was incorrect based on the evidence in the record of proceeding at the time of the decision.

As he did not demonstrate that we incorrectly dismissed his prior motion, the Petitioner did not establish that he meets the requirements of a motion to reconsider. Therefore, we will dismiss the current motion to reconsider.

D. Motion to Reopen

We will similarly dismiss the Petitioner's motion to reopen. As stated previously, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board's definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting

[1] *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals (the Board), governed by 8 C.F.R. § 1003.2(b)(1), which states: "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority." These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.

previously provided evidence does not constitute "new facts." In the current motion, the Petitioner offers previously submitted documentation. As this evidence does not qualify as "new" and we already evaluated it in earlier proceedings, we will not further consider it in this proceeding.

The Petitioner also offers an additional letter of recommendation dated February 2016 from a representative of the [redacted] Gym in [redacted] Thailand, indicating that the Petitioner trained at the gym, and competed in a "fight in [redacted] and for a "WMF pro world title in heavyweight division in [redacted]' between 2013 and 2014. However, the Petitioner has not shown how this letter establishes his eligibility under any of the regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). Accordingly, we will dismiss his motion to reopen.

IV. CONCLUSION

For the reasons discussed, the Petitioner's motion to reconsider has not shown that our latest decision was based on an incorrect application of law or USCIS policy, and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.